

**STATE OF NEW JERSEY
DIVISION ON CIVIL RIGHTS
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
OCR DOCKET NO. EQJ4SB-67245**

Glenn Liou and)
Director, Division on Civil Rights,)
)
Complainants,)
)
v.)
)
Panrax Group LLC,)
)
Respondent.)
)

Administrative Action

PARTIAL FINDING OF PROBABLE CAUSE

On January 18, 2019, New York state resident Glenn Liou (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (OCR) alleging Panrax Group, LLC (Respondent) discriminated against him based on his gender in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. The DCR investigation found as follows.

Summary of Investigation

Respondent is a small business selling candy from various manufacturers on Amazon. The company has one location in Lakewood, New Jersey. The business currently has approximately 10 employees, and its president is Yehudah Miller.

On July 30, 2018, Respondent posted a job opening for an Office Worker position on Indeed.com with the following description: "Looking for organized, committed, self motivated female for small business. Computer and internet savvy a must. Salary based on experience." DCR obtained a screen shot of the posting and confirmed that the posting contained the "self motivated female for small business" language.

Complainant claims that on July 30, 2018, he responded to the job posting via the Indeed website, but on September 19, 2018, Complainant noticed the same job posting still being advertised on Optnation.com. In his verified complaint, Complainant alleged that Respondent discriminated against him by refusing to hire him because he is male.

Respondent denied the allegation of gender discrimination in its entirety. Respondent's position statement stated that Complainant was not qualified for the position and resided in the Bronx, New York, making him unable to commute to the position. It also indicated that it had no formal job description for the position in question, but as a company that mainly markets its products through the internet, it required skills and experience Complainant lacked, such as being

able to market products through the internet using Google Chrome, social media platforms, searching keywords used by consumers to find products, skills in drafting advertisements, etc.

In an answer to DCR's request for supplemental information, Respondent explained that the word "female" in the job posting had been inserted in error, and that [REDACTED] advertised this job posting and changed it multiple times, including eliminating the word "female." [REDACTED], via Respondent's position statement and response for supplemental information, indicated that it received 103 applications from male and female applicants and Miller and [REDACTED] interviewed two or three. [REDACTED] stated that Respondent "did not have an impression one way or the other with regard to the sex of the potential selected candidate."

Documents provided by Respondent show that it hired [REDACTED] on August 17, 2018. A review of [REDACTED]'s resume indicates that she has a bachelor's degree in marketing, experience in marketing including maintaining social media platforms, and skills in Microsoft Office and Excel.

Review of Complainant's cover letter and resume show he has no marketing, computer or internet skills.

[REDACTED] stated that Respondent did not advertise for the job posting in question on September 19, 2018 in Optnation.com, as it had already hired the full-time employee it needed, but said that Indeed.com could have possibly posted it on that site. Despite multiple DCR attempts, Respondent refused to provide the contact information for [REDACTED].

Information obtained during the investigation was shared with Complainant and prior to the conclusion of the investigation, Complainant was given an opportunity to submit additional information to support his claim.

Analysis

At the conclusion of an investigation, the DCR Director is required to determine whether "probable cause exists to credit the allegations of the verified complaint." N.J.A.C. 13:4-10.2. For purposes of that determination, "probable cause" is defined as a "reasonable ground for suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person to believe" that the LAD was violated. Ibid. If the Director determines that probable cause exists, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). However, if the Director finds there is no probable cause, then the finding is deemed a final agency order subject to review by the Appellate Division of the New Jersey Superior Court. N.J.A.C. 13:4-10(e); R. 2:2-3(a)(2).

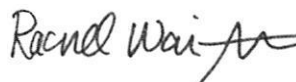
A finding of probable cause is not an adjudication on the merits. Instead, it is merely an initial "culling-out process" in which the Director makes a threshold determination of "whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits." Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 498 U.S. 1073. Thus, the "quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits." Ibid.

The LAD makes it unlawful to discriminate against an employee in the "terms, conditions, or privileges of employment" based on sex or gender. N.J.S.A. 10:5-12(a). It also makes it unlawful for "any employer ... to print or circulate ... any statement, advertisement or publication ... which expresses, directly or indirectly, any limitation, specification or discrimination as to ... sex ... unless based upon a bona fide occupational qualification." N.J.S.A. 10:5-12(c).

Here, Respondent's job posting "looking for organized, committed, self-motivated female for small business" violated N.J.S.A. 10:5-12(c) because Respondent introduced no evidence that being female was a bona fide occupational qualification of the position. Further, Respondent introduced no evidence to support its assertion that the word "female" in the job posting was a clerical error, and repeatedly refused to provide contact information for the person who it said posted the ad. In addition, the "self motivated female" language was posted on at least two web sites, Indeed.com and optnation.com, in July and September 2018. Therefore, the Director, pursuant to .J.A .C. 13:4 -2 .2(e), joins this action as a Complainant and finds **PROBABLE CAUSE** to believe that Respondent violated N.J.S.A. 10:5-12(c) by posting a discriminatory job posting.

However, the DCR investigation found that despite the discriminatory language in the job posting, Respondent did not discriminate against Complainant on the basis of his sex in failing to hire him for the Office Worker position. Respondent is a company that primarily markets products through the internet and it ultimately hired someone with a marketing degree, which Complainant does not have. Moreover, the investigation found that Complainant's application did not receive further action, such as consideration for an interview, because Complainant's cover letter and resume did not provide details about the skills and experience Respondent was seeking. While Respondent's ad did not specify the exact skill set it was looking for in a successful candidate, it stated it was looking for someone who was "computer and internet savvy," which Complainant's materials did not indicate that he is. There is no evidence indicating that Complainant was as or more qualified for the position than **REDACTED**. Therefore, with respect to Complainant's claim of failure to hire based on gender, this case will be closed with a finding of **NO PROBABLE CAUSE**.¹

Date: October 30, 2019



Rachel Wainer Apter, Director
NJ Division on Civil Rights

¹ As Complainant Liou was not deterred from applying for the position and there was not probable cause to credit his allegations that Respondent's refusal to hire him was based on his gender, he is not an "aggrieved party" for purposes of the N.J.S.A. 10:5-12(c) violation. See Hailes v. United Air Lines, 464 F.2d 1006, 1008 (5th Circuit 1972) ("we refuse to rule that a mere casual reader of a [d]iscriminatory advertisement ... may bring suit).

